

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

BRANCH BANKING AND  
TRUST COMPANY,

Plaintiff,

v.

MITCHELL F. COOKE,

Defendant.

Civil Action File  
No. 1:16-CV-04102-TWT

**AMENDED COMPLAINT FOR DAMAGES**

Plaintiff Branch Banking and Trust Company, pursuant to Fed. R. Civ. P. 15(a)(1)(B), hereby files its Amended Complaint for Damages against Mitchell F. Cooke as follows:

**I. PARTIES AND JURISDICTION**

1. Plaintiff Branch Banking and Trust Company (“BB&T”) is a North Carolina banking corporation with its principal office located in Winston-Salem, North Carolina.

2. Defendant Mitchell F. Cooke (“Cooke”) is an individual citizen of Georgia. Cooke was personally served with summons and the initial Complaint for Damages on November 12, 2016.

3. This Court has personal jurisdiction over Cooke, who is a citizen of Georgia.

4. This Court has subject-matter jurisdiction over this matter, pursuant to 28 U.S.C. § 1332, as BB&T and Cooke are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

5. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b) and N.D. Ga. L.R. 3.1(B)(1), as Cooke resides within the Northern District of Georgia, Atlanta Division.

## **II. FACTUAL BACKGROUND**

6. On or about May 7, 2009, DHSS Properties, LLC (“DHSS”) executed under seal and delivered that certain Modification, Renewal and Restatement of Note (For Notes Acquired by Merger) of even date in the face amount of \$5,823,725.00, made payable to BB&T (the “Note”), which was a renewal of an earlier note in favor of Main Street Bank. A true and correct copy of the Note is attached hereto as Exhibit A.

7. BB&T is the successor by merger to Main Street Bank.

8. The Note is guaranteed by that certain Guaranty Agreement from Cooke to BB&T dated May 7, 2009 (the “Guaranty”), which Cooke executed

under seal. A true and correct copy of the Guaranty is attached hereto as Exhibit B.

9. Cooke failed to pay the Note in full at maturity on July 7, 2009, and is in default under the Guaranty.

10. The initial Complaint for Damages notified Cooke, pursuant to O.C.G.A. § 13-1-11, that BB&T intended to enforce the attorneys' fees provisions in the Note and Guaranty and he had ten (10) days from service of the initial Complaint for Damages in which to pay the sums due, as well as any additional interest or other charges that might accrue prior to the tender of payment in full without also being liable for attorneys' fees. The initial Complaint for Damages further notified Cooke that he could avoid the obligation to pay attorneys' fees by paying the sums owed and any additional interest or other charges that may accrue prior to the tender of payment in full, within ten (10) days after the date of service of the initial Complaint for Damages.

11. Cooke did not pay all amounts due and owing under the Note and Guaranty within ten (10) days of service of the initial Complaint for Damages.

### **III. CAUSES OF ACTION**

#### **COUNT I**

#### **Breach of the Guaranty**

12. BB&T re-alleges and incorporates by reference the allegations in Paragraphs 1 through 11.

13. Cooke is in default of his obligations under the Guaranty for failing to pay to amounts owing under the Note and Guaranty upon maturity.

14. Cooke is liable for the principal balance of the Note in the amount of \$643,450.00, accrued interest as of October 28, 2016, in the amount of \$460,248.77, *per diem* interest accruing after October 28, 2016, and through judgment in the amount of \$93.84, and fees in the amount of \$5,494.34.

**COUNT II**  
Attorneys' Fees and Expenses

15. BB&T re-alleges and incorporates by reference the allegations in Paragraphs 1 through 14.

16. Cooke is liable to BB&T for its reasonable attorneys' fees, pursuant to O.C.G.A. § 13-1-11, which is construed to mean 15 percent of the first \$500.00 of principal and interest owing on the Note and 10 percent of the amount of principal and interest owing thereon in excess of \$500.00.

**NOW WHEREFORE**, BB&T prays for the following relief:

(a) that final judgment be entered against Cooke on the Guaranty for the principal balance in the amount of \$643,450.00, accrued interest as of October 28, 2016, in the amount of \$460,248.77, *per diem* interest accruing after October 28,

2016, and through judgment in the amount of \$93.84, and fees in the amount of \$5,494.34;

(b) that such final judgment include an award for BB&T's reasonable attorneys' fees and costs, pursuant to O.C.G.A. § 13-1-11;

(c) an order taxing all costs on Cooke;

(d) post-judgment interest at the Default Rate as provided for in the Note;  
and

(e) for all other relief this Court deems proper.

This 21st day of December, 2016.

**STITES & HARBISON, PLLC**

/s/ Brian J. Levy

Paul G. Durdaller

Georgia Bar. No. 234890

[pdurdaller@stites.com](mailto:pdurdaller@stites.com)

Brian J. Levy

Georgia Bar No. 302518

[blevy@stites.com](mailto:blevy@stites.com)

COUNSEL FOR PLAINTIFF

BRANCH BANKING & TRUST

COMPANY

303 Peachtree Street, N.E.  
2800 SunTrust Plaza  
Atlanta, Georgia 30308  
Telephone: (404) 739-8800  
Facsimile: (404) 739-8890

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically submitted the foregoing **AMENDED COMPLAINT FOR DAMAGES** to the Clerk of Court using the CM/ECF system which, will automatically send electronic mail notification of such filing to counsel of record.

This 21st day of December, 2016.

**STITES & HARBISON, PLLC**

/s/ Brian J. Levy

Paul G. Durdaller  
Georgia Bar No. 234890  
[pdurdaller@stites.com](mailto:pdurdaller@stites.com)

Brian J. Levy  
Georgia Bar No. 302518  
[blevy@stites.com](mailto:blevy@stites.com)

COUNSEL FOR PLAINTIFF

303 Peachtree Street, N.E.  
2800 SunTrust Plaza  
Atlanta, Georgia 30308  
Telephone: (404) 739-8800  
Facsimile: (404) 739-8870